

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-055011

12/09/2013

COMMISSIONER JOHN R. DOODY

CLERK OF THE COURT

T. Pavia

Deputy

LILIA FINOCCHIARO

LILIA FINOCCHIARO
4170 E HALLIHAN DR
CAVE CREEK AZ 85331

v.

MICHELLE TAYLOR

MICHELLE TAYLOR
2000 N. 78TH PLACE #2078
SCOTTSDALE AZ 85255

RULING

The Court has Defendant's motion, entitled "Request For 2nd Hearing" filed on December 16, 2013. For the reasons explained below, the motion is denied.

This is an injunction against harassment case. The Plaintiff filed her petition for injunction on November 14, 2013 and it was granted the same day. The injunction was served upon the Defendant on November 21, 2013.

Under Rules of Protective Order Procedure Rule 8(a), the Defendant is entitled to request "one hearing" to contest the injunction. See also ARS 12-1809(H) and compare ARS 13-3602(I). The Defendant filed a request for hearing on the same day she was served. The Court set a hearing for December 4, 2013 at 9:00 a.m. The Defendant failed to appear for the hearing. The Plaintiff did appear

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and the injunction was dismissed.

Neither the Rules of Protective Order Procedure nor the enabling statutes themselves provide any express guidance on the standard to apply when one party or the other fails to appear at a hearing and then moves to reset the hearing notwithstanding their failure to appear to the one that was previously set. But based both on the one hearing rule, and in order to justify ordering the party who did appear the first time to come back to court ready for trial a second time, at a minimum, the party who failed to appear must show good cause to excuse his or her failure to appear. Compare Rules of Protective Order Procedure Rule 8(A)(1)(b), trial court must find “good cause” to continue a protective order hearing. Under the law applicable in analogous situations, not every instance of mistake, inadvertence, or neglect constitutes “good cause.” Rather, good cause is limited to “excusable” neglect. Compare Rules of Civil Procedure Rule 60(c) (setting forth the standards to apply when the court is being asked to set aside a judgment).

The standards for excusable neglect are well-defined in Arizona. Under the law, mere carelessness will not suffice to establish excusable neglect, nor will inadvertence or forgetfulness. The crux of the standard is as follows: “In order to establish excusable neglect, a moving party must show that he acted as a reasonably prudent person under the circumstances.” Sax v. Superior Court, 147 Ariz. 518, 520, 711 P.2d 657, 659 (App. 1985).

The Defendant says that she applied for her own injunction against harassment against the Plaintiff on November 21, 2013. The Defendant also says that she requested her hearing at the same time as she came to Court to request her own injunction against the Plaintiff. The Defendant alleges that she mistakenly calendared the hearing she requested on the Plaintiff’s injunction for December 9 instead December 4. Defendant claims that she did so out of the confusion that allegedly resulted when her own injunction was initially denied but then someone ran out to the parking lot to tell her it was granted.

The Defendant’s argument implicitly suggests that the process for requesting a hearing as a Defendant and the process for obtaining an injunction against the Plaintiff were accomplished in one integrated and inseparable step, so that the confusion surrounding one caused her to be confused about the other. But on the contrary, the processes for requesting a hearing as a Defendant and the process for obtaining an injunction as a Plaintiff are completely different. If the Defendant also wanted to proceed as a Plaintiff, she would have had to file a new petition and have it heard by a judicial officer. See Rules of Protective Order Procedure, Rule 1(G). Both tasks could have been accomplished on the same day, but the two processes would have been separate and distinct from one another. See Rules of Protective Order Procedure, Rule 1(H).

While the Court follows the logic of the Defendant’s reasoning, the Defendant has not shown that a reasonable person would have made the same mistake that she made under the same circumstances when considered as a whole. Not only are the processes for requesting a hearing and requesting an injunction separate and distinct from one another, there was no need for the Defendant to accurately write down the date of the hearing she requested to challenge the Plaintiff’s injunction where, as here,

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the Court gave the Defendant everything she needed to impart accurate notice of her own hearing. The regular procedure for processing hearing requests in this Division is as follows. A defendant comes to court and files a written request for hearing. While defendant waits in the courtroom, the division judicial assistant processes the request and prepares a hearing order showing the date, time, and place for the hearing. A copy of the order is given directly to the defendant – who leaves the courthouse with the hearing order in hand. The Court takes judicial notice of the fact that the written hearing order actually given to the Defendant in this case accurately set forth the date, time, and place for the hearing. Certainly it was clear enough to impart accurate notice to the Plaintiff. In other words, the Defendant had all the information she needed to have notice of her own hearing to contest the Plaintiff's injunction. What the Defendant did with the information after she received her copy of the hearing order from the Court did not legally excuse her failure to appear at the date, time, and place shown on the order.